

Supreme Court, U. S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 76-1663

FREDERICK CONTRACTORS, INC., et al.,

Petitioners.

v.

**METROPOLITAN FEDERAL SAVINGS AND LOAN
ASSOCIATION OF BETHESDA, et al.,**

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND**

MEMORANDUM OPPOSING CERTIORARI

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Respondents, Metropolitan Federal Savings and Loan Association of Bethesda and Residential Industrial Loan Company, Inc., oppose the petition for a Writ of Certiorari on the grounds that: (1) the decision in the instant case was based upon an adequate and independent state ground; (2) the question presented is moot; and (3) there is no substantial Federal question.

Respondents represent to the Court as follows:

1. The decision in the instant case was based upon *Barry Properties, Inc. v. Fick Bros. Roofing Co.*, 277 Md. 15, 353

A.2d 222 (1976), in which the Court of Appeals of Maryland voided certain provisions of the Maryland Mechanics' Lien Law that violated the due process clauses of Article 23 of the Maryland Declaration of Rights and the Fourteenth Amendment of the United States Constitution. The decision in *Barry Properties* was clearly based upon both state and federal grounds which is manifest from the following language in the opinion of the Court:

"The question with which we are confronted in this case is whether Maryland's present mechanics' lien law is compatible with the due process clauses of Article 23 of the Maryland Declaration of Rights and the Fourteenth Amendment of the United States Constitution." 353 A.2d at 225.

Later the Court concluded:

". . . that because it allows prejudgment seizures without notice, a prior hearing or other sufficient safeguards, and cannot be justified under the extraordinary circumstances exception, Maryland mechanics' lien law is incompatible with the due process clauses of Article 23 and the Fourteenth Amendment." 353 A.2d at 233.

It is well settled that when the judgment of a state court rests upon two grounds, one of which is federal in character and the other is an independent state ground, this Court will not disturb the decision if the independent state ground is adequate to support the decision. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935); *Lynch v. New York*, 293 U.S. 52 (1934); *Berea College v. Kentucky*, 211 U.S. 45 (1908). Thus, since the Court of Appeals of Maryland decided in *Barry Properties* that the Maryland Mechanics' Lien Law was unconstitutional under Article 23 of the Maryland Declaration of Rights, this Court should not grant the instant petition.

Recently, this Court denied certiorari under identical circumstances in *Roundhouse Construction Corp. v. Telesco Masons Supplies Co.*, 168 Conn. 371, 363 A.2d 778 (1975) (Connecticut Mechanics' Lien Law declared unconstitutional), *vacated and remanded*, 423 U.S. 809 (1975) (for determination of whether the decision was based on federal or state grounds, or both), *reaffirmed*, 170 Conn. 155, 365 A.2d 393 (1976) (based on both federal and state grounds), *cert. denied*, 429 U.S. 889 (1976) (judgment rested upon an adequate state ground).*

2. Insofar as concerns this Court, in the establishment of constitutional principles, the issue in the instant case is moot. Subsequent to the decision by the Court of Appeals of Maryland in *Barry Properties* and in an effort to cure due process problems inherent in the old Act, the Maryland General Assembly in 1976 extensively revised the Maryland Mechanics' Lien Law. See MD. ANN. CODE, Real Prop. Art., §§9-101 to 113 (1974, 1976 Cum. Supp.). Thus, the decisions of this Court relating to constitutional due process, on which the Maryland Court of Appeals in part relied, have already served their purpose. And, any decision in the instant case would not be applicable to the newly amended Maryland Mechanics' Lien Law.

3. This case fails to present a substantial federal question. In *Connolly Development, Inc. v. Superior Court of Merced County*, 132 Cal. Rptr. 477, 533 P.2d 637 (1976), the California Supreme Court held that the California Mechanics' Lien Law did not violate the Fourteenth Amendment to the United States Constitution. The case was appealed to this Court but the appeal was dismissed for lack of a substantial federal question. *Connolly Development, Inc. v. Superior Court of Merced County*, 429 U.S. 1056 (1977).

**Roundhouse* was cited by the Court of Appeals in *Barry Properties*.

THEREFORE, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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